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FM AMEMBASSY PRISTINA  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 9076  
INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE PRIORITY  
RUEHNO/USMISSION USNATO PRIORITY 1171  
RUFOADA/JAC MOLESWORTH RAF MOLESWORTH UK PRIORITY  
RUCNDT/USMISSION USUN NEW YORK PRIORITY 1681  
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RHEHNSC/NSC WASHDC PRIORITY  
RUEAWJA/DEPT OF JUSTICE WASHDC PRIORITY  
RUZEJAA/USNIC PRISTINA SR PRIORITY

C O N F I D E N T I A L SECTION 01 OF 03 PRISTINA 000251

SIPDIS

DEPT FOR DRL, INL, EUR/SCE  
NSC FOR HELGERSON

E.O. 12958: DECL: 07/01/2019  
TAGS: [PREL](#) [PGOV](#) [PINR](#) [KV](#)  
SUBJECT: KOSOVO: DECANI LAND ISSUE REACHES LEGAL  
CONCLUSION, BUT POLITICAL SETTLEMENT REMAINS ELUSIVE

REF: PRISTINA 147

Classified By: Ambassador Tina S. Kaidanow for Reasons 1.4 (b), (d).

11. (C) The long-running land dispute between the Visoki Decani Serbian Orthodox monastery and the municipal government of Decani municipality has reached a legal conclusion. On May 19, the Special Chamber of the Kosovo Supreme Court for Kosovo Trust Agency Matters endorsed a settlement proposal agreed by both litigants - the monastery and UNMIK (representing residual KTA interests in the case). The settlement is the same as has been proposed in the past (reftel). The monastery would retain ownership of the parcels disputed in the case, while other properties it owns in the town center would pass to the municipal government. Despite the Special Chamber's endorsement, the municipal government and the socially-owned enterprises (SOEs) involved in the case have not accepted this outcome and have indicated they will not respect the court-endorsed settlement. Gaining the buy-in of these actors to effect a final settlement of the Decani land issue remains a challenge. Much work remains to be done to persuade the objectors - opposition leader Ramush Haradinaj chief among them - to lay this issue to rest. We have engaged our partners in the international community to form a consensus about the way ahead, but much work remains before the case reaches final settlement. END SUMMARY.

#### Special Chamber Acts

12. (SBU) On May 19, the Special Chamber of the Kosovo Supreme Court for Kosovo Trust Agency Matters (AKA the 'Special Chamber') endorsed a settlement proposal in the land dispute case between the Decani monastery and several socially-owned enterprises (SOEs), who are represented by UNMIK Legal Advisor Ernst Tschoepke. UNMIK is representing the residual interest of the now-transferred Kosovo Trust Agency (KTA), which by law must represent all SOEs in court (vice the SOEs' own attorneys). The case, referred to as the 'DLI' (for 'Decani Land Issue'), was legally settled as follows: both Tschoepke and the monastery, as the two litigants, agreed that the monastery would retain ownership of the land parcels disputed in the DLI case, which are located immediately adjacent to the rest of the monastery's property, while two undisputed parcels also owned by the monastery but located in the city center would be transferred

to the municipal government. The Special Chamber endorsed the settlement, now memorialized in the minutes of the hearing, over the objections of Decani mayor Musa Berisha and several lawyers representing the SOEs. Berisha had been added previously as an interested party by the court, while the SOEs' attorneys attended the hearing despite being removed by the court in a prior ruling.

¶3. (C) The Special Chamber's endorsement of the settlement effectively ends the legal portion of the DLI. The objections of Berisha and the SOE attorneys were noted but not accepted by the court. Father Sava Janjic, deputy leader of the monastery, appeared at the May 19 hearing on its behalf and told us on June 22 (after receiving the minutes from the court) that the monastery would now seek a court order to correct any inconsistencies with the registration of the affected properties in the Decani municipal cadastral office. For his part, Berisha has consistently refused to consider abiding by the settlement, despite earlier claims that he would respect the court's decision. For the moment, this puts Berisha in opposition to the Supreme Court of Kosovo.

Political Winds Unfavorable.

¶4. (C) The case will continue to be a hot potato in Decani municipality, where there is hostility to the monastery and the Special Zoning Area (SZA) governing all land development (regardless of ownership) in the area around it. At a May 26 meeting, Berisha told us that he would never recognize the decision because of pressure from the 'citizens' of Decani.

PRISTINA 00000251 002 OF 003

Later in the discussion, he asked whether the central Kosovo government would help settle the case to take the pressure off of him. We asked whether Berisha could get support to settle the case from opposition leader Ramush Haradinaj, who is from Decani municipality, but he demurred, insisting that the decision belonged to him and not Haradinaj.

¶5. (C) We learned subsequently that Berisha, a member of opposition leader Ramush Haradinaj's AAK party, (which has always controlled Decani municipality), had been dropped by the AAK as candidate for Decani mayor in the upcoming municipal elections on November 15, leaving him little incentive to be cooperative on the DLI. Following this, Berisha and Prime Minister Thaci became entangled in a political fight resulting from a budget debate in the Kosovo Assembly, where Thaci was accused of not spending money in opposition-controlled municipalities and then counterattacked by accusing Berisha of not accepting Kosovo Government funds.

The debate had little direct impact on the DLI or the monastery, but combined with Berisha's lame-duck status, it illustrates the unfavorable political situation in Decani, which has made a final political settlement practically impossible for now.

Other Pressures

¶6. (C) On June 26, EULEX Property Rights Coordinator Declan O'Mahoney told us that the local judge on the Special Chamber panel hearing the DLI case had been threatened by Albanian hard-liners from Decani who objected to the settlement. According to him, she has requested recusal from EULEX (which now administers the court), which might be granted. This would effectively freeze the case and prevent the court from issuing any order affecting the cadastral record. O'Mahoney also reported that some of the SOEs' former employees, who were now agitating about the settlement after laying dormant since the DLI case was transferred to the Special Chamber in late May, 2008, were local Kosovo Liberation Army (KLA) veterans, who, in his view, almost certainly had designs on the disputed property, whether or not they had any valid legal claim to it. In O'Mahoney's view (which we share), the Albanian actors interested in the case will continue to view the issue through their filtered lenses of traditional

property rights (which rely on local understanding and not legal documents), ethnic nationalism, and bitter memories of the Milosevic era, when the Monastery received the land as restitution from the Serbian government.

Comment: Work Remains

17. (C) When reviewing the facts of the DLI, it is abundantly clear to us that the only acceptable outcome is one in which the monastery retains the land. This case is similar to many others in which Kosovo Serbs privatized or otherwise received land in the 1990s; the regime performing the transfers may have been odious, but contemporary Albanian objections lack any substantive legal basis and rely on emotion and grievance. The SOEs affected by the DLI settlement were defunct long before the Milosevic era began; current claims by KLA veterans cannot change that. Whatever else is done to sweeten the bitter pill of the settlement for Decani's citizens, any reexamination of the monastery's right to the disputed property would be extremely unwise. Such action would undermine the rule of law and alienate influential moderates within the Serbian Orthodox Church, who, among other things, are trying to convince the Serbian Government to allow church participation in the implementation of Annex V of the Ahtisaari Plan dealing with religious and cultural heritage.

18. (C) (cont'd). To this end, we have engaged our influential partners in the international community to press Haradinaj - who ultimately has ample influence to compel Decani's residents to accept a settlement - to bite the proverbial bullet and accept the court's ruling. UK Ambassador to Kosovo Andrew Sparkes has raised the issue with Haradinaj in person, which has complemented several efforts

PRISTINA 00000251 003 OF 003

by the Embassy to engage his lieutenants (most notably Blerim Shala, editor of daily newspaper Zeri and a key advisor) on the issue. EULEX is now more interested, due both to its recent assumption of responsibility for the Special Chamber and to the monastery's lobbying of EULEX mission head Yves De Kermabon to effect a legal settlement. We are confident the international community will continue to press Haradinaj, and we have seen signs that he understands he cannot be seen to flout the Kosovo Supreme Court. Nonetheless, in all likelihood it will take much time, hard work, and perhaps some horse-trading to put this issue to rest. The approach of local elections makes this normally arduous task even more difficult - but also increases its necessity. END COMMENT.  
KAIDANOW